

SENATE BILL 77

By Massey

AN ACT to amend Tennessee Code Annotated, Title 47  
and Title 56, relative to repair and other services  
performed on powered wheelchairs and parts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following as a new, appropriately designated subdivision:

( ) Violating § 47-18-5703(a);

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

**47-18-5701.** This act is known and may be cited as the "Consumer Wheelchair Repair Bill of Rights Act."

**47-18-5702.** As used in this part:

(1) "Authorized repair provider":

(A) Means a person or entity that is unaffiliated with a manufacturer other than through an arrangement with the manufacturer, whether for a definite or indefinite period, in which the manufacturer, for the purpose of offering to provide services to a powered wheelchair owner regarding the owner's powered wheelchair or a powered wheelchair part, grants the person or entity:

(i) A license to use a trade name, service mark, or other proprietary identifier; or

(ii) Authorization under another arrangement to act on behalf of the manufacturer; and

(B) Includes a manufacturer that offers to provide services to an owner of the manufacturer's powered wheelchair regarding the owner's powered wheelchair or a powered wheelchair part, if the manufacturer does not have an arrangement with an unaffiliated person or entity, as described in subdivision (1)(A);

(2) "Documentation" means a manual; diagram, including a schematic diagram; reporting output; service code description; or similar type of information, whether in an electronic or tangible format, that a manufacturer provides to an authorized repair provider for purposes of assisting the authorized repair provider with services performed on the manufacturer's powered wheelchair or a powered wheelchair part;

(3) "Embedded software":

(A) Means programmable instructions provided on firmware delivered with an electronic component of a powered wheelchair or with a powered wheelchair part for the purpose of restoring or improving operation of the powered wheelchair or part; and

(B) Includes all relevant patches and fixes that the manufacturer makes to a powered wheelchair or to a part for the purpose of restoring or improving the powered wheelchair or part;

(4) "Fair and reasonable terms and costs" means:

(A) With respect to obtaining documentation, powered wheelchair parts, embedded software, firmware, or tools from a manufacturer to provide services, terms that are equivalent to the most favorable terms that the manufacturer offers to an authorized repair provider, and costs that are no greater than the manufacturer's suggested retail price, that are calculated using net costs incurred, and that account for discounts, rebates, or incentives offered;

(B) With respect to documentation, the manufacturer provides the documentation, including relevant updates to the documentation, at no charge, excluding a charge by the manufacturer for a fee for a printed copy of the documentation, if the amount of the fee covers only the manufacturer's actual cost to prepare and send the printed copy of the documentation; and

(C) With respect to tools that are software programs, the manufacturer provides the tools that are software programs:

(i) At no charge and without requiring authorization or internet access or otherwise imposing impediments to access or use;

(ii) In the course of effectuating the diagnosis, maintenance, or repair and enabling the full functionality of a powered wheelchair or a powered wheelchair part; and

(iii) In a manner that does not impair the efficient and cost-effective performance of the powered wheelchair or part;

(5) "Firmware" means a software program or set of instructions programmed on a powered wheelchair or a powered wheelchair part to allow the powered wheelchair or part to communicate with itself or with other computer hardware;

(6) "Independent repair provider":

(A) Means a person or entity in this state that is engaged in offering or providing services;

(B) Does not include a manufacturer's authorized repair provider or an affiliate of a manufacturer's authorized repair provider; and

(C) Includes:

(i) An authorized repair provider, if the authorized repair provider is offering or providing services for a manufacturer other than a

manufacturer with which the authorized repair provider has an arrangement, as described in subdivision (1)(A); and

(ii) A manufacturer, with respect to offering or providing services for another manufacturer's powered wheelchair or powered wheelchair part;

(7) "Manufacturer" means a person or entity doing business in this state and engaged in the business of selling, leasing, or otherwise supplying new powered wheelchairs or powered wheelchair parts manufactured by or on behalf of itself to a person or entity;

(8) "Owner" means a person or entity that owns a powered wheelchair or an agent of the owner;

(9) "Powered wheelchair" means a motorized wheeled device designed for use by a person with a physical disability;

(10) "Powered wheelchair part" or "part" means a new or used replacement part for a powered wheelchair that a manufacturer offers for sale or otherwise makes available for the purpose of providing services;

(11) "Services" means diagnostic, maintenance, or repair services performed on a powered wheelchair or a powered wheelchair part;

(12) "Tools" means a software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of powered wheelchairs or powered wheelchair parts, including software or other mechanism that provides, programs, or pairs a new part; calibrates functionality; or performs another function required to return the powered wheelchair or part to fully functional condition; and

(13) "Trade secret" means any scientific or technical information, design, process, procedure, formula, or improvement, in whole or in part; confidential business

or financial information; listing of names, addresses, or telephone numbers; or other information relating to any business or profession that is secret and of value, and for which the owner of the trade secret has taken measures to prevent the secret from becoming available to persons or entities other than those selected by the owner to have access to the trade secret for limited purposes.

**47-18-5703.**

(a) Subject to subsections (b)–(e), a manufacturer shall, with fair and reasonable terms and costs:

(1) For the purpose of providing services for a powered wheelchair in this state, make available to an independent repair provider or owner of the manufacturer's powered wheelchair any documentation, powered wheelchair parts, embedded software, firmware, or tools that are intended for use with the powered wheelchair or part, including updates to documentation, parts, embedded software, firmware, or tools; and

(2) With respect to a powered wheelchair that contains an electronic security lock or other security-related function, make available to independent repair providers and owners any documentation, powered wheelchair parts, embedded software, firmware, or tools needed to reset the lock or function when disabled in the course of providing services. The manufacturer may make the documentation, parts, embedded software, firmware, or tools available to independent repair providers and owners through appropriate secure release systems.

(b) Subsection (a) does not apply to:

(1) A powered wheelchair part that is no longer available to the manufacturer; and

(2) Conduct that would require the manufacturer to divulge a trade secret; except, that a manufacturer shall not refuse to make available to an independent repair provider or owner any documentation, part, embedded software, firmware, or tool necessary to provide services on grounds that the documentation, part, embedded software, firmware, or tool itself is a trade secret.

(c) A manufacturer may redact documentation to remove trade secrets from the documentation before providing access to the documentation, if the usability of the redacted documentation for the purpose of providing services is not diminished.

(d) A manufacturer may withhold information regarding a component of, design of, functionality of, or process of developing a part, embedded software, firmware, or a tool, if the information is a trade secret and the usability of the part, embedded software, firmware, or tool for the purpose of providing services is not diminished.

(e) A manufacturer is not liable for faulty or otherwise improper repairs provided by independent repair providers or owners, including faulty or otherwise improper repairs that cause:

- (1) Damage to powered wheelchairs that occur during such repairs;
- (2) Any indirect, incidental, special, or consequential damages; or
- (3) An inability to use, or a reduced functionality of, a powered wheelchair resulting from the faulty or otherwise improper repair.

**47-18-5704.**

(a) Subject to subsection (b), this part does not:

- (1) Alter the terms of a contract or other arrangement in force between a manufacturer and an authorized repair provider, including the performance or provision of warranty or recall repair work and an exclusivity or noncompete clause in a contract;

(2) Require a manufacturer to provide an independent repair provider or owner access to information, other than documentation, that the manufacturer provides to an authorized repair provider pursuant to a contract or other arrangement with the authorized repair provider, except as necessary to comply with § 47-18-5703(a); or

(3) Exempt a manufacturer from a products liability claim that is otherwise authorized by law.

(b) With respect to a contract or other arrangement, or renewal of a contract or existing arrangement, that a manufacturer enters into on or after the effective date of this act, a contract term, provision, agreement, or language in the contract or arrangement that waives, avoids, restricts, or limits the manufacturer's obligations under this part is void and unenforceable as a matter of law and public policy.

SECTION 3. This act takes effect July 1, 2023, the public welfare requiring it, and applies to contracts and agreements entered into, amended, or renewed on or after that date.